FILE COPY ONLY PIBS 3461

MINISTRY OF ENVIRONMENT AND ENERGY

MINISTERIAL TASK FORCE

ILLEGAL WASTE OPERATIONS

REPORT OF THE POWERS AND PENALTIES SUBCOMMITTEE

JUNE 1994

Later released

This document contains confidential advice to the Minister of Environment and Energy and the Government. It is not to be photocopied or distributed outside the Government of Ontario.

FILE COPY ONLY PIBS 3461

MINISTRY OF ENVIRONMENT AND ENERGY

MINISTERIAL TASK FORCE

ILLEGAL WASTE OPERATIONS

REPORT OF THE POWERS AND PENALTIES SUBCOMMITTEE

JUNE 1994

Cater released

This document contains confidential advice to the Minister of Environment and Energy and the Government. It is not to be photocopied or distributed outside the Government of Ontario.

MINISTRY OF ENVIRONMENT AND ENERGY
MINISTERIAL TASK FORCE
ILLEGAL WASTE OPERATIONS

REPORT OF THE
POWERS AND PENALTIES SUBCOMMITTEE

INTRODUCTION
- Background 1
- Recommendations 1
- Committee Members 2

POWERS
- Provincial Officers Instructions - Section 156a 4
- Seizure of permit and number plates - Section 48 10
- Seizure of equipment and vehicles - Section 157 13
- Calling for Police Assistance - Arrest Powers - Section 166 18
- Service of Offence Notice and Summons - Section 181 21

PENALTIES
- Increased Penalties for Corporations - Section 187(1) 25
- Increased Penalties - Jail Terms - 187(2) 28
- Increased Penalties - Liquid Industrial & Hazardous Waste - 193(1) 31
- Notice of Increased Penalties - Sections 187(3) and 193(5) 34

MISCELLANEOUS
- Restitution Orders - Section 190 38
- Environmental Appeal Board - Stays - Section 143 41
- Obstruction & False Information - Sections 158(7), 167 and 184 45
- Certified Copies - Section 175a 48

This document contains confidential advice to the Minister of Environment and Energy and the Government.. It is not to be photocopied or distributed outside the Government of Ontario.

INTRODUCTION

BACKGROUND:

A Ministerial Task Force was formed to deal with the issue of illegal waste operations.

The issue of illegal transfer stations and illegal dumping has made it apparent that there is a need for amendments to the *Environmental Protection Act* and the regulations. The individuals involved in these illegal sites have demonstrated a blatant disregard for the environmental laws of Ontario. They continue to operate without Certificate of Approvals, they fail to comply with Orders issued by the Directors, and they provide false information to ministry staff. They continue to do so because illegal operations are profitable and current penalties are failing to have a deterrent effect. In addition, there are a number of areas where the Act and regulations are flawed and/or have created GREY areas.

As part of the task force, the "Powers and Penalties Subcommittee" was formed. The objective of this group was to make recommendations regarding the need to amend or modify legislation to enhance the enforcement of solid non-hazardous waste violations. It should be noted that the recommendations for changes to powers and penalties enhance the enforcement capabilities in all areas of the Act and are not limited to offences in respect of solid non-hazardous waste.

RECOMMENDATIONS:

The Powers and Penalties Subcommittee identified and reviewed legislative hurdles or gaps that acted as impediments to the enforcement of solid non-hazardous waste (SNHW) violations.

The committee has produced 13 recommended legislative amendments. These amendments, while directly related to the *Environmental Protection Act*, should be viewed as being applied to the *Ontario Water Resources Act* and *Pesticides Act*, as applicable, to ensure a consistency across the legislation.

The proposed amendments would enhance our ability to effectively carry out our mandate to maintain the quality of the environment and protect the ecosystem with a special emphasis on S.N.H.W. enforcement. The recommendations generally relate to the powers of Provincial Officers or to penalties available under the Act but many of the proposed sections are contingent upon each other and they should be considered integral to the entire package.

The recommended amendments, while in the committee's opinion are all necessary and worthwhile, do have varying implications on other programs and the regulated community. As with any change to legislation, existing ministry polices and procedures would be reviewed and modified. This, in conjunction with a training program, will ensure consistent application and understanding of these modifications across the province.

COMMITTEE MEMBERS:

Julian Wieder (Chair)
Investigations and Enforcement Branch

W.E. (Bill) Cockburn
Office of the Assistant Deputy Minister
Operations Division

Richard Raeburn-Gibson
Central Region

Chris Williams
Investigations and Enforcement Branch

Jerry Herlihy
Legal Services Branch

Powers

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Provincial Officers Instructions - Section 156a

Description of amendment

To authorize officers to issue Provincial Officers Instructions on site when, as the result of an inspection, the officer identifies illegal activities.

Reason for amendment

Currently, orders to have work done (e.g. removal of waste under EPA s. 43) require that the Provincial Officer prepare the order subsequent to the site visit. The requirement for review of the order by Legal Services Branch and a search of MCCR records make this approach time consuming and inefficient. A Provincial Officers Instruction would provide the Provincial Officer with a tool to effectively address many types of illegal activities and non-compliance in a timely manner.

Present wording

Provincial Officers Instructions are not currently provided for in the EPA. Examples of the legislative authority for other forms of EPA orders include sections 7 (control order - discharge of a contaminant), 8 (stop order - discharge of a contaminant), 12 (directed to the person responsible), 17 (remedial orders), 18 (preventative measures), 43 (removal of waste), 44 (waste management systems/sites non-compliance), 79 (sewage systems), 124 (control orders), 150 (order to pay), 157 (detention or removal) and 190 (protect and restore natural environment). All of these orders are time consuming and resource intensive in their application.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

New Section Under Part XV

156a (1) Where a Provincial Officer finds that a provision of this Act or the regulations is being contravened, the Provincial Officer may instruct orally or in writing, the owner or previous owner, an occupant or previous occupant, or a person or persons whom he or she believes to be in charge and control of the activity or actions that caused or are causing the contravention to:

(a) comply with the provision;

(b) take the remedial, security or preventative measures specified by the Provincial Officer;

(c) stop activities as specified by the Provincial Officer which may cause impairment or serious risk of impairment of the quality of the natural environment for any use which can be made of it;

(d) stop activities as specified by the Provincial Officer which may constitute a danger to human life, the health of any persons or to property; or

(e) require the submission to the Ministry of a compliance plan prepared in the manner and including such items as required by the Provincial Officer.

(2) When issuing an instruction as set out in subsection (1) the Provincial Officer may require the instruction to be carried out immediately or within such period of time as the Provincial Officer specifies.

(3) Where a Provincial Officer makes an oral instruction under subsection (1) the Provincial Officer shall confirm the instruction in writing before leaving the site where the contravention was identified.

RECOMMENDED AMENDMENT

Suggested wording (continued)

(4) The instruction made under subsection (1) shall indicate generally the nature of the contravention and where appropriate the location of the contravention

(6) A compliance plan required under subsection (1) shall specify what work or action is planned and when compliance will be achieved.

(7) A Provincial Officer is not required to hold a hearing or provide notice before issuing and order under subsection (1).

(8) Any person who feels aggrieved by the requirements of an instruction by a Provincial Officer under subsection (1) may forthwith appeal to the Director who shall hear and dispose of the appeal as promptly as is practicable but the bringing of such appeal does not effect the operation of the order appealed from pending disposition of the appeal.

(9) An appeal to the Director may be made in writing, orally or by telephone but the Director may require the grounds for appeal to be specified in writing before the appeal is heard.

(10) On an appeal under this section the Director may substitute his or her findings or opinion for those of the Provincial Officer who made the instruction and may rescind or affirm the instruction or make a new instruction in substitution therefor and the instruction of the Director shall stand in place and have the like effect under the Act as the instruction of the Provincial Officer.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Comparable legislation

The following lists some examples of other Provincial legislation which provides for the power to issue Provincial Officers Instructions (examples attached).

(1) Occupational Health and Safety Act - Section 57: Ministry of Labour field orders where OH&S violations are identified.

(2) Gasoline Handling Act - Section 15(3) - Used by MCCR - Fuel Safety Branch Inspectors appointed under the Energy Act to deal with violations pertaining to the storage, distribution and transportation of fuel.

(3) Fire Marshals Act - Section 18 (2) - Officer making an inspection under the act may order things such as: the removal of buildings; the removal of combustible or explosive material; the implementation of preventative measures; and the closing of buildings until corrective actions have been taken (example of field order form attached).

Copies of the appropriate sections of these three pieces of legislation are available upon request.

Benefits

While existing EPA orders will still be appropriate in some instances the Ministry requires a tool to deal with less complex instances of non-compliance in a manner which will send an immediate and strong message of zero tolerance to the violator. A Provincial Officer using Provincial Officers Instructions would issue the instruction to those who were in "charge and control" of the site or operation unless other parties where readily available and discernable.

Provincial Officers Instructions would demonstrate efficient use of MOEE resources and reduce abatement, Legal Services Branch, administrative support and IEB time spent on abating and investigating instances of non-compliance.

Industry would immediately know what is expected of them and in what time frame they would have to comply.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Impact on the industry

There is no anticipated impact on legal waste management operations. Effective control of the waste management industry will provide a level playing field for those legal operators competing for waste management business.

Financial impact on the government

More efficient use of staff resources by significantly reducing the time frame and work involved in issuing orders under the existing provisions.

Situational examples

(1) Illegal waste management operations often utilize the modus operandi of leasing a property, depositing waste on the property (inside or outside) over a short period of time and abandoning the property. The Ministry's existing tools for dealing with these scenarios are not effective in that they cannot be implemented in a timely manner. As a result, there exists a strong possibility that a site will be filled with waste and the perpetrators will have moved on to another site before the Ministry can take effective action. The amendment would allow immediate interdiction in ongoing violations with serious penalties for those who choose to continue.

(2) Provincial Officers often identify situations involving potential or actual impacts to the environment as the result of inspections (e.g. stored drums leaking into a water course or storm sewer). In these situations, under the current legislation the Provincial Officer has the following options: issue a violation notice; give verbal instructions; return to the office and prepare a letter; return to the office and prepare an order following a search of MCCR files and a review by Legal Services Branch; or issue a ticket (if short form wordings exist for the offence). In many cases the above noted approaches are not effective in dealing with a significant problem in a timely and effective manner. The amendment allows provincial officers to instruct immediate action which will serve to minimize potential impacts to the environment.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Comments

The proposed amendments will require the appropriate mechanisms be in place such as: the preparation of a Provincial Officers Instruction format; training for staff; revisions to the compliance policy; linking this revised section to the appropriate penalties sections of the EPA; and the implementation of the required administration procedures (e.g. EBR registry).

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Seizure of permit and number plates - Section 48
(and related sections)

Description of Amendment

To authorize police and provincial officers to seize the permit and number plates of vehicles being used in the commission of an offence.

Reason for amendment

The existing section is poorly worded and is limited to Liquid Industrial and Hazardous Waste. Due to the wording, there are very few, if any, situations where the criteria that the officer must believe could be met.

Present wording

48. (2) A police officer or a provincial officer may seize the permit and the number plates for a vehicle where he or she is of the opinion, upon reasonable and probable grounds,

(a) that the vehicle was used or is being used in the commission of an offence in respect of hauled liquid industrial waste or hazardous waste; and

(b) that the continued operation of the vehicle will result or is likely to result in an adverse effect.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested Wording

48. (2) A police officer or a provincial officer may seize the permit and the number plates for a vehicle where he or she is of the opinion, upon reasonable and probable grounds,

(a) that the vehicle was used or is being used in the commission of an offence under the act or the regulations ~~in respect of hauled liquid industrial waste or hazardous waste; and~~

~~(b) that the continued operation of the vehicle will result or is likely to result in an adverse effect.~~

Benefits

This amendment would enable officers to immediately stop environmental offenders, act as a strong deterrent to potential offenders, and is an effective tool for repeat offenders.

Impact on the industry

There will be no impact on the legal carriers.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Financial impact on government

The courts could order the continued detention or suspension of plates or permits pending of payment of fines.

Situational examples

A routine vehicle inspection determined that an uncertified American hauler was carrying liquid industrial waste destined for the United States. The driver was not trained and the load was not manifested. The present wording of this section prevented the officers from detaining the vehicle without the complete cooperation of the driver, the transport company and the waste generator.

Comments

It is recommended that the entire section dealing with 'Vehicle Permits' be moved to part XV - 'Provincial Officers'

The Act (Vehicle Permits - Section 48 - 55) presently detail what procedures and options are available to the courts, officers and registrar of Motor Vehicles. These section will be modified to reflect the new wording of section 48.

The Ministry assumes no liability for the vehicle or contents by seizing the number plates or permits.

Date: June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Seizure of equipment and vehicles - Section 157

Description of Amendment

Modify section 157 to allow a provincial officer to seize a vehicle being used in the commission of an offense under the act or the regulations.

Reason for amendment

The current legislation only allows the detention of a vehicle for up to two days and only if it is discharging and likely to continue discharging a contaminant into the environment. There is no mechanism to seize a vehicle that is being used to illegally haul waste and allow for its forfeiture upon conviction.

Present wording

157 (1) Where a thing, including a vehicle or vessel, is discharging or is likely to discharge a contaminant into the natural environment which causes or is likely to cause an adverse effect, a provincial officer may, without a warrant or court order, protect or conserve the natural environment by,

a) giving the person responsible for the thing a direction in writing requiring that the thing be detained at the place where it is found; or
b) removing the thing or causing it to be removed from the place where it is found and giving a receipt for it.

(2) A person shall not detain or remove a thing under section (1) for more than two days excluding holidays without the consent of the person responsible for it except under the authority of an order under section 158.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

157. is repealed and replaced with

157. A police officer or provincial officer may, without warrant, seize any thing, including any vehicle, vessel, container, goods or equipment where the officer on reasonable and probable grounds believes that,

(a) the thing has been used in connection with the commission of an offense.

1) The officer shall

(a) issue a receipt for the thing seized; and

(b) deliver the thing seized into the custody of a person authorized by the Director for safekeeping until it is returned or forfeited in accordance with section.

2) Any thing seized and not forfeited under this section shall be returned to the person from whom it was seized if,

(a) a charge is not laid at the conclusion of the investigation; or

(b) a charge is withdrawn or dismissed.

RECOMMENDED AMENDMENT

Suggested Wording (continued)

3) If the charge is not laid, dismissed or is withdrawn, but possession of the thing seized is an offense against this Act or the regulations, an officer may apply to the justice of the peace for an order of forfeiture to the Crown in right of Ontario.

4) If a person is convicted of an offense, the court may order, in addition to any penalty that any thing seized in relation to the conviction is forfeited to the Crown in right of Ontario and may be disposed of as the Minister directs.

158. (2) Repealed

Report to justice

162. (1) A provincial officer who seizes any thing ~~during an inspection or search~~ under section 157, 160 or 161 shall bring the thing seized before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace.

Application of *Provincial Offences Act*

162. (2) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized by a provincial officer ~~during an inspection or search~~ under section 157, 160 or 161. 1988, c. 54, s. 44, part.

Comparable Legislation

EPA Section 161
Game and Fish Act Section 16
Bill 162, Game and Fish Act Sections 16 & 16.1

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Benefits

The forfeiture of trucks and trailers used by illegal waste operators to the Crown would be a strong deterrent. In addition this would prevent these vehicles from continuing to operate illegally pending trial. Any forfeited equipment could be sold at auction and the funds raised would go to the Crown in right of Ontario.

Impact on the industry

There will be no impact on individuals and companies operating within the law.

Financial impact on government

Upon conviction, the courts may order the forfeiture of the thing seized to the crown. The crown would then be in a position to auction the thing seized with the profit going to the crown.

Situational examples

An illegal waste disposal site operator could have their bulldozer or other on site waste handling equipment seized.

An uncertified waste hauler dumping at an illegal site could have their truck seized.

In both of these cases we currently could not seize the equipment nor could the courts order its forfeiture to the Crown.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Comments

This amendment would be a powerful tool in the fight against illegal waste handling and a strong deterrent.

Sections 160 and 161 of the *Environmental Protection Act* also deal with seizures. However they are distinct and are not effected by this amendment. Section 162 which outlines the procedure for making a return to a justice of the peace, needs to be amended to ensure consistency with all seizure section under the act.

Date: June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Calling for Police Assistance - Arrest Powers - Section 166

Description of Amendment

To authorize **police officers** to arrest suspects 'found committing' specific offences under the *Environmental Protection Act*.

Reason for amendment

The existing powers of Provincial Officers do not allow for the immediate interdiction in serious ongoing environmental offences. This section will empower **police officers** to arrest persons found committing environmental offences thus removing the ability of the offender from continuing the offence.

Present wording

The sections referenced in the proposed amendment would have to be modified to include a potential jail term in order to allow for an arrested person to be brought before a judge or justice of the peace for a bail hearing.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested Wording

166-(4) Any police officer who, on reasonable and probable grounds, believes that a contravention of any of the provisions of section 14(1), 17, 18, 43, 44, 79, 97, 125, 130(1), or 167 of this Act has been committed, may arrest, without warrant, the person he or she believes committed the contravention.

(5) A police officer or officer appointed for carrying out the provisions of this Act, making an arrest with warrant, may detain the motor vehicle with which the offence was committed until the final disposition of any prosecution under this Act or under the Criminal Code (Canada), but the motor vehicle may be released on security for its production being given to the satisfaction of a justice of the peace or judge.

[Note - subsection 166(5) may not be required if the amendments dealing with plate and vehicle seizures are passed]

(6) All costs and charges for the care and storage of a motor vehicle detained under subsection (5) are a lien upon the motor vehicle, which may be enforced in the manner provided by the Repair and Storage Liens Act, R.S.O. 1980, C. 198, s. 190(5);1989, c.17, s. 35(2).

(7) A police officer making an arrest without a warrant, shall, with reasonable diligence, take the person arrested before a justice of the peace or provincial judge to be dealt with according to law.

Comparable Legislation

Section 217(2) of the Highway Traffic Act provides an effective model for our legislation.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT.

Benefits

This amendment would enable the province to more effectively control serious violators of the Act and Regulations. The benefits include increased safety for MOEE field staff, accurate identification of suspects, immediate stop for continuing offences and it minimizes the impact on the environment, victim and the Crown. The amendment will also serve as a strong deterrent to criminal environmental offenders and will allow the Ministry to act against blatant offenders by calling for police assistance.

Impact on the industry

There is no anticipated impact on the legally operating haulers within the industry.

Financial impact on the government

There is not financial benefit or loss to the government.

Situational examples

In the summer of 1992, an investigation into an illegal waste transfer site lead to an order being issued against the operator for failure to obtain a provisional certificate of approval. The operator continued to dump waste illegally on the property. Provincial officers were unable to successfully stop the offender and prevent the violation from continuing. Drivers dumping at the illegal site did not appear to heed the tickets being issued to them and continued to dump illegally at the instructions of the owner. The ability to arrest the operator would have stopped the offence from continuing.

In the summer of 1991, a tanker illegally hauling liquid industrial waste from Ontario to Michigan was inspected pursuant to a Vehicle Inspection Project. The driver could not be detained and the Ministry had no assurances that the driver would return to Ontario to attend a trial or pay any fines resulting from sentencing. Arrest powers would allow bail provisions to be set by the court for out of province offenders or those individuals considered to be a flight risk.

Date: June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Service of Offence Notice and Summons - Section 181

Description of amendment

The present section authorizes an officer to serve a offence notice or summons (only under Part I of the *Provincial Offences Act*) to the driver on behalf of the owner of the vehicle or the employer of the driver. The amendment will extend the service provisions to include Part III of the *Provincial Offences Act*.

Reason for amendment

As Part I (tickets) of the Provincial Offences Act was originally designed for individuals, the service of a corporation was not easily done. The Environmental Protection Act was amended to provide for service of the driver of the vehicle to be considered '**Good Service**' on the owner of the vehicle or the employer of the driver. Part I has a maximum fine of $500.

Part III of the POA allows for a summons to be served on an individual when he/she is '**found committing**' the offence. Part III is the main part of the Provincial Offences Act used by this ministry for laying charges (fines higher than the $500 ticket limit).

At present, our officers cannot serve a 'found committing' summons on the driver because section 181 limits it to Part I summons.

The amendment will allow the officers to effect service of a summons on any corporation that found committing an offence in the province by serving the driver with the summons on behalf of the company.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Present wording

181. (1) In this section,

"commercial motor vehicle" and "motor vehicle"
have the same meanings as in the *Highway Traffic Act*; ("véhicule utilitaire", "véhicule automobile")
"offence notice or summons"
means an offence notice or summons under Part I of the *Provincial Offences Act*. ("avis d'infraction ou assignation")

Suggested Wording

181. (1) In this section,

"commercial motor vehicle" and "motor vehicle"
have the same meanings as in the *Highway Traffic Act*; ("véhicule utilitaire", "véhicule automobile")
"offence notice or summons"
means an offence notice or summons under Part I, or a summons under section 22 of the *Provincial Offences Act*. ("avis d'infraction ou assignation")

Benefits

The officers will be given more options when dealing with out of province and American companies, by allowing for a summons to be served directly to the driver at the time he/she is found committing the offence. Immediate service of summons enhances the deterrent effect of legal action.

Impact on the industry

There is no anticipated impact on the legally operating corporations.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Financial impact on the government

More efficient use of staff resources as several steps are removed in order to achieve service on corporations.

Situational examples

There are a number of American haulers exporting waste from Ontario. Presently an officer stopping the vehicle can only serve the company a Part I summons (maximum $500 fine) and many companies may not appear in court due to the insignificant potential fine.

With this amendment, a Part III summons could be issued to the company and served on the driver at the time he/she was found committing the offence. This summons would require the corporation to attend court and would allow the courts to impose the full extent of the penalties under the *Environmental Protection Act*.

Date June 20, 1994

PENALTIES

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Increased Penalties for Corporations - Section 187(1)

Description of amendment

To increase the penalties for corporations for offences relating to orders and approvals.

Reason for amendment

Presently the act has higher penalties for offences involving adverse effects and for not complying with a stop order. This amendment will include most other order sections.

Present wording

187. (1) Every corporation convicted of a contravention of subsection 14 (1) or 130 (1) is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not less than $2,000 and not more than $200,000 on a first conviction and not less than $4,000 and not more than $400,000 on each subsequent conviction and not as provided in section 186.

Suggested wording

187. (1) Every corporation convicted of a contravention of subsection 8(1), 14(1), 17, 18, 43, 44, 79, 97, 125, or 130 is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not less than $2,000 and not more than $200,000 on a first conviction and not less than $4,000 and not more than $400,000 on each subsequent conviction and not as provided in section 186.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Benefits

The increased penalties should act as a deterrent for corporations who are considering the present fine structure as the 'Cost of doing business in Ontario'.

Impact on the industry

There is no anticipated impact on the legally operating corporations. There is a range in penalties so that the courts can set the penalty based on the facts of the case. It is up to the courts to decide on the appropriate penalty based on submissions from both the defence and the crown.

Financial impact on the government

No financial impact on the government would result from this amendment.

Situational examples

A corporation may be operating an illegal transfer station for construction and demolition waste. The next step would be for the ministry to issue a directors order to stop receiving waste and remove all the waste from the site.

Failing to comply with such an order would presently have a maximum fine (providing there was no environmental impact from the site) of $50,000.00 per day for a first offence and $100,000 for a subsequent conviction. There is no minium.

A per diem minimum fine of $2,000 ensures fines for continuing offences will be significant and therefore act as a deterrent.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Comments

The applicable sections of the act are:

Section 8(1) - Director - Stop Orders
Section 17 - Director - Issued by Director
Section 18 - Director - Order re Preventive Measures
Section 43 - Director - Order for Removal of Waste
Section 44 - Director - Bring into conformity with Part V and Regulations
Section 79 - Director - Order re Sewage System
Section 97 - Minister - Order re: Spills
Section 125 - Compliance with Control Order
Section 130 - Compliance with Stop Order

There should be consideration to linking these increase penalties to the *Pesticides Act* and the *Ontario Water Resources Act.*

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Increased Penalties - Jail Terms - 187(2)

Description of amendment

Increase the number of offences where a jail term may be imposed.

Reason for amendment

The present penalty sections are not acting as a deterrent to the illegal operators in the waste business. They have been treating the penalties as **'The cost of doing business in Ontario'**. This amendment will give the courts the ability to apply a penalty that is more appropriate to the illegal operators who have committed an offence with intent and blatant disregard for the laws of Ontario.

Present wording

187(2) Every person convicted of a contravention of subsection 14(1) or 130(1) is liable, in addition to or in substitution for the penalty set out in subsection 186(5), to imprisonment for a term of not more than one year.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

187(2) Every person convicted

(a) of a contravention of subsection 8(1), 14(1), 17, 18, 43, 44, 79, 97, 125, 130(1), 167, of this act, or

(b) on a subsequent conviction, or

(c) where the crown has proven intent to commit the offence, under this act or the regulations,

is liable, in addition to or in substitution for the penalty set out in subsection 186(5), to imprisonment for a term of not more than one year.

Benefits

The benefits are two fold, the first being the deterrent to potential illegal operators and the second being that the courts will now be able to impose penalties which more appropriately reflect the crime. Specifically, where the defendant has committed the act with intent and has shown a blatant disregard for the laws of Ontario.

Impact on the industry

There is no anticipated impact on the individuals who operate within the laws of Ontario.

Financial impact on government

There is no financial benefit to the government.

Although there are the costs to the government associated with incarceration, circumstance may dictate that it is the most appropriate sentencing option available to the courts.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Situational examples

There are a number of illegal waste operators who incorporate the current penalties as the **'cost of doing business'**.

There are a significant number of repeat offenders that have been convicted numerous times for illegal dumping, failing to comply with clean-up orders and / or not complying with the conditions of their certificates of approval (if they have one). These types of individuals are operating with a criminal mind, and the availability of jail terms may be the only suitable sentencing option that will keep them from continuing to commit crimes against the environment.

Comments

This amendment will also require a change to section 188 (defines a subsequent conviction) by adding section 187(2).

This section should be linked to the *Ontario Water Resources Act* and the *Pesticides Act*.

Date June 16, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Increased Penalties - Liquid Industrial & Hazardous Waste - 193(1)

Description of amendment

Increase the length of a jail term under this section.

Reason for amendment

With the proposal for increased jail terms under section 187(2), it is appropriate to increase this section to a more lengthy term.

The courts have ruled in various cases that there is a higher degree of responsibility when dealing with liquid industrial and hazardous waste and that offences of this nature are very serious.

Present wording

193(1) Where any person is convicted of an offence under this Act or under subsection 30(1) of the *Ontario Water Resources Act* in respect to hauled liquid industrial waste or hazardous waste as designated in the regulation relating to Part V of this Act and the action or failure to act for which the person is convicted may result in an adverse effect, the person is, instead of the fine elsewhere provided for the offence, liable on conviction.

(a) for each part of a day on which the offence occurs or continues to a fine of not less than $2,000 and nor more than $10,000 on a first conviction and not less than $4,000 and not more than $25,000 on each subsequent conviction;

(b) to imprisonment for a term of not more than one year; or

(c) to both such fine and imprisonment.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

193(1) Where any person is convicted of an offence under this Act or under subsection 30(1) of the *Ontario Water Resources Act* in respect to hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V of this Act and the action or failure to act for which the person is convicted may result in an adverse effect, the person is, instead of the fine elsewhere provided for the offence, liable on conviction,

(a) for each day or part of a day on which the offence occurs or continues to a fine of not less than $2,000 and nor more than $10,000 on a first conviction and not less than $4,000 and not more than $25,000 on each subsequent conviction;

(b) to imprisonment for a term of not more than ~~one year~~ two years less one day; or

(c) to both such fine and imprisonment.

Benefits

The benefits are two fold, the first being the deterrent to potential illegal operators and the second being that the penalty will have been adjusted to reflect the increase number of offences which can get up to one year in jail under section 187.

Impact on the industry

There is no anticipated impact on the individuals who operate within the laws of Ontario.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Financial impact on the government

There is no financial benefit to the government.

Although there are is the costs to the government associated with incarceration, circumstance may dictate that it is the most appropriate sentencing option available to the courts.

Situational examples

The environmental sensitivity of liquid industrial and hazardous waste demands that higher penalties be afforded for offences related to these wastes.

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Notice of Increased Penalties - Sections 187(3) and 193(5)

Description of amendment

To revoke requirement for Notice of Increased Penalty. Presently, although the legislation provides for the possibility of imprisonment of individuals convicted of certain offences (actual pollution, failing to obey a stop order, offences involving hauled liquid industrial and hazardous waste) and for higher fines for both corporations and individuals where hazardous or hauled liquid industrial waste are involved, the prosecutor must give notice to the defendants before the trial begins that these penalties will be sought.

Reason for amendment

This requirement is anomalous in view of fact that the penalties which can be imposed upon conviction are clearly set out in the Act, and in view of the fact that there are numerous other types of dispositions available (eg. restorative orders, stripping of profits, etc.) for which no advance notice is required. The notice requirement is an unnecessary paper work hurdle to the prosecution, and often involves IEB officers having to spend time making an extra attendance upon defendant(s) for the purpose of effecting service.

Present wording

187. (3) Subsection (2) [imprisonment] does not apply unless the court is satisfied that the person was notified, before entering his or her plea, that a penalty would be sought under subsection (2).

193. (5) Subsections (1) to (4) [penalties where hauled liquid industrial waste or hazardous waste involved] do not apply unless the court is satisfied that the defendant was notified before entering a plea that a penalty would be sought under subsection (1), (2), (3) or (4).

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested Wording

Sections 187(3) and 193(5) to be revoked.

Benefits

Avoidance of situation where defendant gets unintended benefit of more lenient penalty structure designed for offences other than the one defendant was convicted of, simply because of Crown's oversight as to issuance and/or service of notice directing attention of defendant (or defendant's counsel) to appropriate penalty provisions of Act.

Impact on the industry

No anticipated impact on defendants in most cases, as required Notices have usually been served in appropriate cases. Courts will continue to impose appropriate penalties having regard to a plethora of sentencing considerations, of which the maximum penalty prescribed by statute is merely one.

Financial impact on the government

This amendment would result in more efficient use of staff resources. As a result, it would have a positive financial impact on the government and there is no negative impact.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Situational examples

As with any other paper work requirement, occasionally things will "fall between the cracks". In one high profile prosecution charges had been laid under both the *Environmental Protection Act* and the *Ontario Water Resources Act* but through inadvertence a Notice of Increased Penalty had been served only on the *EPA* charges (the evidence turned out to be stronger on the *OWRA* charges (water pollution) then the *EPA* charges (soil contamination).

Furthermore the wording of Section 193. (5) would appear to require the Crown, at a time before the defendant's plea has even been entered, to advise the defendant whether the penalty will be sought on the basis that the offence was one which "may result" in an adverse effect or "did result" in an adverse effect. Often it is not until all the evidence (including the defence expert evidence) is concluded that a court can make a determination as to whether the risk to the environment was merely created, or actually materialized, and to what extent.

Date June 20, 1994

MISCELLANEOUS

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Restitution Orders - Section 190

Description of amendment

Give the courts the power to issue restitution orders.

Reason for amendment

Currently a court that convicts a person of an offence may also order them to restore the natural environment within a fixed period of time. However, if the land owner, municipality or the ministry has cleaned up the site prior to the completion of the trial (as is often the case), they are faced with the proposition of a civil suit to recover the cleanup costs. The amendment would allow a court on its own initiative or on application of the crown to issue an order for restitution in addition to any other penalty.

Present wording

190.(1) On its own initiative or on application by counsel for the prosecutor, the court that convicts a person of an offence under any other section of this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the natural environment of the offence and to restore the natural environment within the period or periods specified in the order.

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

190.(1) On its own initiative or on application by counsel for the prosecutor, the court that convicts a person of an offence under any other section of this Act, in addition to any other penalty imposed by the court, may order the person to take all or part of the action applied for to prevent, decrease or eliminate the effects on the natural environment of the offence and to restore the natural environment within the period or periods specified in the order.

(a) In the event that other parties have taken action to prevent, decrease or eliminate the effects on the natural environment of the offence or to restore the natural environment prior to the persons conviction the court may order the convicted person to make restitution in an amount that the court determines as appropriate under the circumstances.

(2) An order under subsection (1) may contain such other conditions relating to the circumstances of the offence and of the person that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation.

Benefits

The benefits are two fold, the first being that the victims of unlawful acts can have the court hearing the evidence in the case also rule on restitution, and thus avoid a second civil trial. The second benefit is that more parties would be prepared to take early action to cleanup the environment and thus prevent further and more costly delayed cleanups if they could anticipate restitution upon conviction of the accused.

Impact on the industry

There is no anticipated impact on the individuals who operate within the laws of Ontario.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Financial Impact on the government

A restitution order can be made in addition to any other penalties imposed by the court. The restitution could be directed to the crown for work that had been done by the crown.

Situational examples

A rural home owner was blocked from leaving his home by a load of waste that had been dumped in his driveway. Items mixed in the waste lead investigators to charge an illegal waste hauler who was subsequently convicted 11 months later. The Judge while sympathetic with the home owner did not have the authority to order the waste hauler to repay the $1,500 that had been paid to cleanup the waste from his driveway. The owner was faced with the prospect of trying to recover his costs civilly, which would include hiring a lawyer and further time spent in court away from work, resulting in a loss of income.

Comments

Section 72 (3)(a) of the *Provincial Offenses Act* empowers the courts to issue a probation order requiring the payment of compensation or restitution where it is authorized or required by an Act. This amendment would allow the court to order a convicted illegal dumper to repay the party that had cleaned up the disposal site without having to launch a civil suit and go through a second trial using much of the same evidence.

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Environmental Appeal Board - Stays - Section 143

Description of amendment

To prohibit Environmental Appeal Board from issuing a stay of an Order where the effect of that stay would be to permit the continuation of plainly illegal activities, ie., those which require a certificate of approval but which are being carried on without such certificate of approval.

Reason for amendment

Frequently ministry staff come across situations where waste is being hauled by uncertified carriers and or is being taken to uncertified sites. Sections 41 and 43 of the *Environmental Protection Act* allow orders to be made requiring the cessation of such activities. However, the party carrying on the activity has the right of appeal to the Environmental Appeal Board, and currently the Environmental Appeal Board has a discretion to stay the operation of the order either on an interim (i.e., short-term) basis or pending a full hearing of the appeal, which might be several months away and occupy quite sometime once commenced. Where the carrier has no certificate of approval to be hauling the waste at all, or where the site has no certificate of approval whatsoever to permit it to receive any waste, it would be inappropriate of the Board to grant the stay, as doing so would condone an illegal activity and bring the Ministry's efforts to control illegal waste operations to a standstill.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Present wording

143. (3) The Board shall not stay the operation of a decision or order if doing so would result in,

(a) danger to the health or safety of any person;

(b) impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it; or

(c) injury or damage or serious risk of injury or damage to any property or to any plant or animal life.

143. (6) The Board, on the application of a party under subsection (4) or (5), shall remove a stay if failure to do so would have one or more of the results mentioned in clauses (3) (a) to (c). 1990, c. 18, s. 3.

Suggested Wording

Suggested Wording

143. (3) (a), (b) and (c) [same as current, except that the word "or" following (b) is moved to follow (c)]

(d) [new] the continuation of an activity requiring a certificate of approval or a provisional certificate of approval by a party who does not possess or is not in compliance with such a certificate of approval or provisional certificate of approval.

143 (6) [same as current Section 143 (6), except that the reference to clauses (3) (a) to (c) shall be changed to read "clauses (3) (a) to (d)"

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Benefits

The creditability of orders issued under the Act will be enhanced if offenders cannot circumvent them by lodging an appeal. Considerable illegal profit could be reaped by an unlicensed operator who manages to string things out through effective use of the appeal process after obtaining a stay. Likewise, the appeal process will be enhanced, as a party who is making money while a stay is in force has no interest in having the appeal come on for hearing.

Impact on the industry

There would be no impact on legal waste management operations, as the proposed amendment by definition deals only with those who are unlicensed and therefore illegal. Efficient and effective cessation of illegal waste management activities will tend to direct waste business to legal operators utilizing appropriate practices and sites.

There is no injustice in requiring a party operating without a certificate of approval to suspend activities pending the hearing of an appeal.

Financial impact on the government

This amendment may reduce the number of appeals, which presently have a significant impact on ministry resources.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Situational examples

In *Starnino* v. *Director, Ministry of Environment and Energy*, the Environmental Appeal Board did grant an interim stay in respect of a waste disposal site which was operating without a certificate of approval. The interim stay allowed the illegal operation to continue for a further 50 days; as the illegal operator had the right to apply for such a stay, he presumably also operated without cessation between the date when the Director's Order was issued and the date when his interim stay application was heard (an additional 31 days).

While the amendment could have been drafted even more broadly (eg, "the Board shall not grant any stays in any circumstances" or "the Board may grant a stay where a party makes out a good arguable case that the order is in error in some material respect"), the proposed amendment will simply prevent stays being granted in favour of those parties who have no genuine issue to bring before the Board as they are operating without a license and therefore patently illegally.

The proposed amendment would not prevent the Board from hearing a stay application on behalf of someone who wished to argue that his activity did not require a certificate of approval or provisional certificate of approval, eg., a recycling operation, but that thorny issue will have to be redressed by a more workable definition of "recyclable material".

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation/ Section

Environmental Protection Act
Obstruction & False Information - Sections 158(7), 167 and 184

Description of amendment

There are three sections in the act that deal with obstruction, providing false information and failing to provide information. This amendment will merge the three sections together and help clarify them.

Reason for amendment

The amendment is more house keeping in nature, although it is directly related to the amendment to include jail terms for obstruction and false information.

Present wording

158. (7) Every person responsible for a source of contaminant shall furnish such information as a provincial officer requires for the purposes of this Act or the regulations.

167. No person shall hinder or obstruct a provincial officer in the lawful performance of his or her duties or furnish a provincial officer with false information or refuse to furnish the provincial officer with information required for the purposes of this Act and the regulations.

184. No person shall knowingly give false information in any application, return or statement made to the Minister, a provincial officer or any employee of the Ministry in respect of any matter under this Act or the regulations.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested wording

167. No person shall;

(a) hinder or obstruct a provincial officer in the lawful performance of his or her duties, or

(c) refuse to furnish the provincial officer with information required for the purposes of this Act and the regulations, or

(b) furnish a provincial officer with false information, or

(d) knowingly give false information in any application, record to be kept, return or statement made to the Minister, a provincial officer or any employee of the Ministry in respect of any matter under this Act or the regulations.

Section 158(7) is revoked.

Section 184 is revoked.

Benefits

This amendment streamlines a number of sections and creates only one new requirement..

The only new requirement is the addition of "'records to be kept" . This amendment supports recent legislation which requires records to be maintained rather than submitted to the ministry.

Impact on the industry

There is no anticipated impact on the legitimate businesses.

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Financial impact on the government

No financial impact on the government would result from this amendment.

Situational examples

Under many of the new waste initiatives, companies will be required to keep records such as the amount of waste material brought into the site, were it came from and were it was shipped to. This amendment would make it an offence for companies to falsify these records.

Date June 20, 1994

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Act / Regulation / Section

Environmental Protection Act
Certified Copies - Section 175a

Description of amendment

To restore "certified copy" provisions which were deleted in earlier amendments to the legislation. The proposed amendment would facilitate the admissibility in court proceedings of certain types of documents when they have been "certified" by an appropriate person.

Reason for amendment

To facilitate the introduction into evidence of documentation, such as manifests. Such documents are not presently admissible in prosecutions or other proceedings under the "official document" provisions of the legislation (Section 175 (2)) because, by their nature, they are not "signed by the Minister, the Director or an employee of the Ministry", as required by that subsection. Difficulties have been encountered in prosecutions when courts have ruled that the "makers" of the documents must be called as witnesses: often these people are employees of the defendant being prosecuted; sometimes they are no longer employed by the company and their whereabouts is unknown; and invariably they have no recollection of the facts underlying the routine transaction evidenced in the document.

The *Ontario Evidence Act* provision for introduction of "business records" would be of assistance, but requires the calling of some (usually defence-employed) witness to testify that the document was the "type" of document kept in the company's ordinary course of business. The common law provisions about the admissibility of documents "found in possession" of the defendant are also helpful, although not widely understood.

Present wording

Not applicable

MINISTRY OF ENVIRONMENT AND ENERGY
TASK FORCE - ILLEGAL WASTE OPERATIONS
LEGISLATIVE AND REGULATORY CHANGES
POWERS AND PENALTIES SUBCOMMITTEE

RECOMMENDED AMENDMENT

Suggested Wording

175a. A copy of any document, purporting to be certified by a Provincial Officer, is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the facts set out therein without proof of the signature or the official position of the person appearing to have signed it.

Benefits

Streamline prosecutions and other court proceedings by obviating the necessity of calling certain witnesses on routine matters covered in business correspondence.

Impact on the industry

While a document is presumed to have an inherent trustworthiness due to its having been made in the course of business and relied upon for that purpose, any party is entitled to challenge the accuracy of the document by adducing evidence to the contrary.

Financial impact on the government

More efficient use of staff resources, by reducing the number of staff required to attend court proceedings.

Situational examples

A Kitchener prosecution was once imperilled, and a Sudbury prosecution dismissed, when manifests (required to be filed under Reg. 347) were not admitted into evidence without further proof of the underlying transactions.

Other documents such as contracts, correspondence, etc. are sometimes challenged as being merely "pieces of paper" (ie., not evidence of the facts stated therein), even where these documents have in some cases been filed with the Ministry, sometimes pursuant to a statutory requirement.

Date June 20, 1994